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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010-631**

13 **Ann Burdick-Whipp aka Ann J.**
14 **Burdick Whipp and Ann Jeanette**
Aragon
15 **41338 Yuba Circle**
Temecula, CA 92591

A C C U S A T I O N

16 **Registered Nurse License No. 281888**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Complainant Louise R. Bailey, M.Ed., RN, ("Complainant") brings this Accusation
22 solely in her official capacity as the Interim Executive Officer of the Board of Registered Nursing
23 ("Board"), Department of Consumer Affairs.

24 2. On or about August 31, 1977, the Board of Registered Nursing issued Registered
25 Nursing License Number RN 281888 to Ann Burdick-Whipp (Respondent). The Registered
26 Nursing License was in full force and effect at all times relevant to the charges brought herein and
27 will expire on February 28, 2011, unless renewed.

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JURISDICTION

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

6. Code section 2762 states, in pertinent part:

~~In addition to other acts constituting unprofessional conduct within the~~
meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license . . .

7. Code section 2770.11 states:

(a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's

1 participation in a program. The name and license number of a registered nurse who
2 is terminated for any reason, other than successful completion, shall be reported to
the board's enforcement program.

3 (b) If the program manager determines that a registered nurse, who is denied
4 admission into the program or terminated from the program, presents a threat to
5 the public or his or her own health and safety, the program manager shall report
6 the name and license number, along with a copy of all diversion records for that
registered nurse, to the board's enforcement program. The board may use any of
the records it receives under this subdivision in any disciplinary proceeding.

7 8. Code section 4060 states:

8 No person shall possess any controlled substance, except that furnished to
9 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
11 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
12 nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to
13 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist
14 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
15 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
shall not apply to the possession of any controlled substance by a manufacturer,
wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
physician assistant, when in stock in containers correctly labeled with the name and
address of the supplier or producer. Nothing in this section authorizes a certified
nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to
order his or her own stock of dangerous drugs and devices.

16 9. Code section 4324, subdivision (a), states:

17 Every person who signs the name of another, or of a fictitious person, or
18 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine,
19 any prescription for any drugs is guilty of forgery and upon conviction thereof shall
be punished by imprisonment in the state prison, or by imprisonment in the county
jail for not more than one year.

20 10. Health and Safety Code section 11170 states that no person shall prescribe,
21 administer, or furnish a controlled substance for himself.

22 11. Health and Safety Code section 11173 states, in pertinent part:

23 (a) No person shall obtain or attempt to obtain controlled substances, or
24 procure or attempt to procure the administration of or prescription for controlled
substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

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1 **TERMINATION FROM DIVERSION PROGRAM**

2 11. On or about July 7, 2004, Respondent voluntarily enrolled in the Board's Registered
3 Nursing Diversion Program ("Diversion Program") when Respondent admitted to diverting and
4 using Nubain from her place of employment. As part of her diversion, Respondent was placed in
5 a drug treatment program. On or about November 16, 2009, Respondent diverted Methadone
6 from a hospice patient and used it. The Diversion Evaluation Committee mandated her to a 90
7 day inpatient treatment program. Respondent opted to withdraw from diversion rather than
8 continue in treatment. On or about December 1, 2009, the Board's Diversion Evaluation
9 Committee terminated Respondent from the Diversion Program for failure to comply with the
10 rehabilitation plan. Further, the Board deemed that Respondent constitutes a public safety risk.

11 **COST RECOVERY**

12 12. Code section 125.3 provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.
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17 **DRUGS AT ISSUE**

18 13. Methadone is a Schedule II controlled substance as designated by Health and Safety
19 Code section 11055(c)(14), and is a dangerous drug pursuant to Business and Professions Code
20 section 4022. Methadone is used for treatment of narcotic addiction in detoxification or
21 maintenance programs.

22 14. Tramadol is not currently listed as a controlled substance in the Health and Safety
23 Code, however it is a dangerous drug pursuant to Business and Professions Code section 4022.
24 Tramadol is used for treating moderate to moderately severe pain, restless leg syndrome, acid
25 reflux, and fibromyositis.

26 15. Benzodiazepines are Schedule IV controlled substances as designated by Health and
27 Safety Code section 11057, subdivision (d), and is a dangerous drug pursuant to Business and
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Professions Code section 4022. Benzodiazepines are used for treatment of anxiety, insomnia, agitation, seizures, muscle spasms, alcohol withdrawal, and as a premedication for medical or dental procedures.

DRUG TEST RESULTS

Date of Test	Positive Result for Dangerous Drug
November 12, 2009	Methadone and Methadone Metabolite
May 29, 2008	Tramadol
May 20, 2008	Tramadol
July 12, 2007	Benzodiazepines
July 6, 2007	Benzodiazepines

FIRST CAUSE FOR DISCIPLINE

(Diversion, Possession, Prescription, and Self-Administration of Dangerous Drugs)

14. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that on or about November 16, 2009, while employed as a registered nurse,

Respondent did the following:

Diversion of Dangerous Drugs:

a. Respondent obtained the dangerous drug, methadone, by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173, subdivision (a) when she took methadone that was prescribed to a hospice patient and tested positive for the drug, as reflected in the above drug test results.

Possession of Dangerous Drugs:

b. Respondent possessed the dangerous drugs methadone, benzodiazepines, and tramadol, as set forth in subparagraph (a) and the drug test results above, without a valid prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060.

1 **Prescription of Dangerous Drugs:**

2 c. Respondent prescribed the dangerous drugs, methadone, benzodiazepine, and
3 tramadol for herself, as set forth in subparagraph (a) and the drug test results above.

4 **Self-Furnishing of Dangerous Drugs:**

5 d. Respondent furnished methadone, benzodiazepines, and tramadol to herself without
6 lawful authority therefore, as set forth in subparagraph (a) and the drug tests above.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Use of Dangerous Drugs or Controlled Substances to an Extent or in a Manner**
9 **Dangerous or Injurious to Oneself and/or Others)**

10 15. Respondent is subject to disciplinary action pursuant to Code section 2761,
11 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
12 subdivision (b), in that while licensed as a registered nurse, and undergoing treatment for a
13 previous instance of drug diversion in the Board's diversion program, Respondent used
14 dangerous drugs and/or controlled substances, namely methadone, benzodiazepines, and
15 tramadol, to an extent or in a manner dangerous or injurious to herself and/or others as described
16 in subparagraph 14 (a) and the drug test results above. Respondent was eventually terminated
17 from diversion due to her failure to comply with the provisions of the rehabilitation plan.

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PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nursing License Number RN 281888, issued to Ann Burdick-Whipp.

2. Ordering Ann Burdick-Whipp to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 6/10/10

for 
LOUISE R. BAILEY, M.ED., R.N.
Interim Executive Officer
Board of Registered Nursing
State of California
Complainant

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